

CONTRACTUAL SERVICES CONTRACT
BETWEEN
CORRECTIONS CORPORATION OF AMERICA
AND
STATE OF WISCONSIN
DEPARTMENT OF CORRECTIONS

THIS CONTRACT, is made this 2nd day of FEBRUARY, 1998, by and between the State of Wisconsin, Department of Corrections, having its principal office at 149 East Wilson Street, Madison, Wisconsin, 53702, hereinafter referred to as the "Department" and Corrections Corporation of America, a corporation organized under the laws of the State of Tennessee, having its principal office at 10 Burton Hills Boulevard, Nashville, Tennessee, 37215, hereinafter referred to as "Contractor".

WHEREAS, the Department is authorized pursuant to sec. 301.21, Stats., to enter into contracts for the transfer and confinement in another state of inmates who have been committed to the custody of the Department, and

WHEREAS, in accordance with the terms and conditions of Request for Proposal # C-461, on November 26, 1997, the Contractor submitted a Proposal to the Department and has been selected by the Department to house inmates committed to the Department, and

WHEREAS, the Department is authorized by statute to enter into this Agreement pursuant to which the Contractor will provide housing and care for certain inmates,

NOW, THEREFORE, in consideration of the promises, covenants and agreements contained herein, the parties hereto mutually agree as follows:

ARTICLE 1
DEFINITIONS

ACA – means American Correctional Association

ACA Standards – means the Standards for Adult Correctional Institutions, Third Edition, as same may be modified, amended or supplemented in the future, published by ACA.

Contract Administrator – means the person or designee appointed by the Department, who shall work for and be paid by the Department to act as the official liaison between the Department and Contractor on all matters pertaining to the services provided under this Contract.

Facilities – means the Hardeman County 1 and Hardeman County 2 secure correctional facilities located in Hardeman County, Tennessee.

Inmate – means any adult male committed to the Department and assigned to the Facilities.

Manday – means each day an inmate is admitted to the Facilities, including the first but not the last day of incarceration.

Service Commencement Date – means the first day inmates are received and incarcerated at the Facilities pursuant to this Contract.

State – means the State of Wisconsin.

Unforeseen Circumstances – means those acts or occurrences beyond the reasonable contemplation of the parties at the time of the execution of this Contract which materially alter the financial conditions upon which this Contract is based, including the failure of the Wisconsin legislature's Joint Finance Committee to approve this Agreement or appropriate funds to continue this Contract.

ARTICLE 2 TERM OF THE CONTRACT

- 2.0 The Contract shall be effective on the contract execution date and shall run for one (1) year from that date, with an option by mutual agreement of the Department and Contractor, to renew for 2 (two) additional 1 (one)-year periods.
- 2.1 This Contract may be canceled, with or without cause, by either party without penalty upon sixty (60) days advance written notice given by Certified Mail with return receipt requested. Notices to the respective parties of this Contract shall be sent in accordance with the Article dealing with Notices.
- 2.2 The Department may cancel this Contract in whole or in part without penalty due to nonappropriation of funds or failure of the Contractor to comply with terms, conditions and specifications of this Contract.

ARTICLE 3 INMATES

- 3.0 Contractor agrees to securely house and provide services for up to twelve hundred (1,200) male inmates at the Facilities. Offenders assigned will be adult males. The Contractor may transfer any of the inmates from one facility to the other without the Department's prior approval but will notify the Department of such transfer by the close of the business day following the transfer. After the initial transfer of inmates to the Facilities, it is anticipated that Hardeman 1 will house approximately 200 inmates and Hardeman 2 will house 1,000 inmates. The Department, subject to the Wisconsin legislature's Joint Finance Committee's approval of this Contract and availability of funds, shall transfer inmates to the Facilities in accordance with the following schedule:

February, 1998	200 inmates to Hardeman 1 Facility;
March, 1998	200 inmates to Hardeman 1 Facility;
July, 1998	400 inmates to Hardeman 2 Facility; and
August, 1998	400 inmates to Hardeman 2 Facility.

3.1 WORK STATEMENT

- 3.1.1 The Contractor shall provide confinement, care, treatment and rehabilitation for male inmates, transferred by the Department to the Contractor. Inmates shall be housed at the Contractor's correctional facilities in medium and maximum custody.
- 3.1.2 The Contractor shall perform the services set forth in this contract in accordance with federal, state and local laws, and ACA Standards in such a manner as to ensure equitable treatment of all inmates, regardless of race, religion, color, or national origin.

3.2. DELIVERY OF INMATE

The Contractor agrees it will provide and be responsible for the transportation of inmates to the Facilities and locally for medical appointments, emergency medical care and court appearances. The Contractor will provide and be responsible for the cost of transporting groups of ten(10) or more inmates back to Wisconsin while the Department agrees to be responsible for the transportation of groups of less than ten (10) inmates back to Wisconsin.

3.3 TRANSFER OF FUNDS

The Contractor shall establish and maintain a system to account for inmate general account (commissary) funds in accordance with Department Policies and ACA Standards. The Contractor shall credit to the inmate' accounts all funds due the inmate either from the Contractor or Department. Upon return of the inmate to the custody of Department, the Contractor shall transfer, within seven (7) calendar days, to Department, the balance remaining in the inmate's account. This shall include any moneys owed to the inmate by the Contractor at the time of the transfer. Contractor will provide the Department with a copy of accounting transactions of any inmate upon request within five (5) business days. Upon return of inmates to the Department, copies of all accounting transaction records for inmates shall be provided by Contractor. The handling of such funds shall be in accordance with the Department's policies and procedures.

3.4 REMOVAL FROM INSTITUTION

In the event of the removal or transfer of an inmate, the Contractor shall inform the Department of the whereabouts of the inmate as soon as possible but no later than the end of the next business day of said removal or transfer via telephone followed by a written notification within three (3) working days, of such removal or transfer.

3.5 RETAKING OF INMATES

3.5.1

The Department will retake any inmate, upon the written request of the Contractor, provided the Department concurs with the removal of the inmate from the Contractor's Facilities, within thirty (30) days after receipt of the request to retake.

3.5.2

If an inmate's sentence is terminated for any reason, the Department shall notify the Contractor as soon as possible and shall take custody of the inmate at the Contractor's facility either by an employee of the Department or by an agent of the Department acting under authority of contract.

3.6 DEATH OF INMATE

3.6.1

In the event of the death of an inmate, the Contractor shall notify the Department of such event as soon as possible, but not later than two (2) hours after Contractor first learns of the death. The Contractor shall provide an official copy of the local state/county medical examiner/coroner's report and a complete set of fingerprints to the Department within five (5) calendar days. The Contractor shall take whatever actions it can to obtain an autopsy of the inmate and provide any other information concerning the death of the inmate as requested by Department, including but not limited to an autopsy report, to the Department as soon as possible. The Contractor shall pay any costs associated with obtaining the autopsy. The Contractor shall assist the Department in arranging transportation of the deceased inmate to Wisconsin at the Department's expense. Logistics for the transfer of the body shall be coordinated between the Contractor and the

Department and shall be approved in advance by the Department. The Contractor shall not release the body of the inmate to any authority other than the Department, except as permitted by a written order from the Department.

3.6.2

The Contractor shall submit a certified copy of the death certificate to the Department within fifteen (15) working days after the death of an inmate while in the Contractor's custody. The Contractor shall promptly return the dead inmate's property and funds to the Department.

3.6.3

The provisions of this section shall govern the responsibilities only of the Department and the Contractor and shall not be construed to affect the liability of any relative or other person for the disposition of the deceased or for any expenses connected therewith.

3.7 OFFENDER PROPERTY

Contractor shall manage offender property in accordance with its policy.

3.8 CLASSIFICATION AND APPLICATION

3.8.1

The Department shall only send, and the Contractor shall only be required to receive, medium and maximum inmates in accordance with the Department's classification system. The Department shall, at its own expense and within thirty (30) calendar days upon notice from the Contractor, take back an inmate if the Contractor determines and the Department concurs that the inmate is no longer a medium or maximum inmate. The Contractor shall house inmates in disciplinary segregation when such status is imposed by the Contractor.

3.8.2

The Department shall submit a pre-transfer application to the Contractor on each inmate proposed for confinement in the Contractor's Facilities. The application will be made available to the Contractor at least ten (10) calendar days prior to the inmate's transfer. The application will contain complete up-to-date information and the supporting documents (when applicable) relating to the inmate's personal and institutional information such as name, Department inmate number, date of birth, case history, physical and clinical condition, judicial and administrative rulings, photographs and fingerprints. Upon the receipt of the transfer package, the Contractor shall have five (5) calendar days to review the transfer package. If the Contractor objects to the transfer of an inmate(s) the Contractor shall notify the Department of its objection and the Contractor and the Department shall attempt to resolve the objection within ten (10) calendar days from the receipt of the transfer package. If the objection is a classification issue it shall be resolved in accordance with the Department's classification system. In the event there is no mutual agreement between the Contractor and the Department on the objection within the ten (10) day time frame, the Department's decision regarding the objection shall govern.

ARTICLE 4
SCOPE OF SERVICES

4.0 MEDICAL SERVICES

4.0.1

The Contractor agrees to provide a program of inmate medical, mental and dental health care delivered by licensed health care staff overseen by a health care administrator who,

in conjunction with the appropriate care provider, shall have final responsibility for clinical decisions. The licensed staff shall include:

- physician - both primary care and psychiatrist
- registered nurse(s)
- dentist
- dental hygienist.

The Contractor agrees this health care shall be delivered onsite, at least 16 hours per day Monday through Friday and at least 8 hours per day Saturday, Sunday and legal holidays, with provision for emergency services 24 hours, seven days, either on or offsite at a nearby emergency facility. The Contractor agrees there shall be on call nursing coverage during hours when there is no health care staff at the institution.

The Contractor agrees to provide, at a minimum, health care that meets the essential standards for health care of inmates in correctional facilities as provided for in the AMA 1979 standards and subsequent NCCHC prison standards. The Department agrees it will not transfer to the Facilities any inmate with a known serious, ongoing medical problem.

Contractor agrees the primary health care services it provides under this Contract will include but not necessarily be limited to the following onsite services:

1. Primary care services, including sick call on a daily basis to general and lockdown populations;
2. Medical and surgical specialty clinics;
3. Emergency care;
4. Infirmary services;
5. Pharmacy services;
6. Special medical and dental diets;
7. Dental services;
8. Vision services;
9. Laboratory services;
10. Radiology services;
11. Physical medicine, physical therapy services, speech therapy, and occupational therapy;
12. Quality assurance/quality improvement/utilization review;
13. Mortality and peer review;
14. Infection control;
15. Staff development and training;
16. Treatment, management, and control of TB, HIV/AIDS, and other infectious diseases;
17. Mental health services; and
18. Medical and dental prostheses.

Contractor agrees the medical care it provides pursuant to this contract shall comply with all applicable federal, state and local laws and regulations on this subject.

4.0.2

Medical Records

Contractor agrees to implement a medical record system utilizing the Department's medical record and chart forms as provided by the Department. The Contractor agrees to use the Problem Oriented Medical Record (POMR) format, and shall ensure that accurate, comprehensible, legible, up-to-date medical information is maintained on each inmate placed under its care by the Department pursuant to this Contract. The Department agrees to provide Contractor with a summary of an inmate's medical record prior to the inmate's transfer to Contractor's custody and to provide a complete copy of the inmate's medical record to the Contractor once the inmate is transferred to the Facilities.

Medical records will be considered confidential and the Contractor agrees to ensure specific compliance with laws and standards regarding confidentiality, informed consent, and access/disclosure. The Contractor agrees to establish procedures for the receipt and filing of all outside consults, emergency room visits and inpatient hospitalizations.

The contractor agrees to comply with the Wisconsin state statute regarding retention of health records. All medical records of Wisconsin inmates sent to the Contractor under this Contract, whether or not the inmate is ultimately sent to the Facilities, including x-ray films, are the property of the Department. These records will accompany inmate movement among contractor's Facilities and to and from the state of Wisconsin.

4.0.3

Pharmacy Services

The Contractor agrees to provide pharmacy services which provide for necessary prescription and appropriate over-the-counter (OTC) medications.

4.0.4

Offsite Health Care

The Contractor agrees this care shall be limited to emergency, specialty and tertiary care as directed by the Facilities licensed health care providers. The Department agrees that physical therapy, speech therapy and occupational therapy services may be provided offsite.

4.0.5

Outpatient Care

The Contractor agrees it shall provide at its cost outpatient care pursuant to this Contract. Such care shall be subject to a pre-authorization utilization review for necessity by a licensed health care provider who can legally direct alternate care options, except in the case of emergency health care services such as those provided at an emergency room.

The Contractor shall also provide onsite emergency treatment to officials of the state of Wisconsin who become ill or injured while on official business at the Facilities. Treatment to consist of stabilization, referral or call for emergency medical services/ambulance. Facilities used for outpatient services to inmates and Wisconsin officials shall be licensed practitioners, clinics, and care centers appropriate for the required care.

4.0.6

Inpatient Health Care

The Contractor agrees a licensed hospital(s) which provides for all inpatient medical/psychiatric services as appropriate will be utilized. There shall be a program of prior pre-authorization carried out by the Contractor for all but emergency inpatient admissions for necessity, which shall be conducted by a licensed health care provider who can legally direct alternate care.

4.0.7

Administrative Reports

The Contractor agrees it will provide quarterly reports covering the actual provision of services to inmates pursuant to this Contract. At a minimum such reports shall show numerically the number of inmates actually seen for each of the following services: sick call; medical appointments broken down as to a) physician, b) registered nurse, c) nurse practitioner or physician assistant, d) dentist, and e) mental health provider; number of offsite outpatient visits; number of offsite inpatient discharges; number of onsite emergencies treated; number of labs per inmate; and number of x-rays per inmate.

4.0.8

Payment for Health Services

1. Onsite

The Contractor agrees it is financially responsible for the cost of all health care, including staff, medications, supplies, services, equipment, and communications provided to or for inmates onsite, whether required by Contractor staff or offsite consultants. The cost of adding additional pages, forms, and incorporation of outside medical consultant report to the medical record is included in costs paid by the Contractor.

2. Offsite Outpatient

The Contractor will be responsible for payment direct to the billing facility for the costs of all such care, including medications, special treatments, supplies, and prostheses ordered by the outpatient provider for the health care of the inmate, which originates while this Contract is in effect.

3. Offsite Inpatient Hospital

The Contractor agrees to be responsible for payment direct to the billing facility for the costs of all such care provided in the hospital or ordered to be provided after the inmate is returned to the Facilities. The Contractor may claim reimbursement from the Department at the rate of 60% of all charges over \$60,000 per inpatient hospital discharge for each single hospital stay which originates while the contract for services is in effect between the Contractor and the Department.

4.0.9

Medical Services Claims

The Contractor agrees to submit claims for medical services rendered pursuant to this Contract as received. The Department reserves the right to audit the billings for such charges for accuracy and medical necessity as part of the claim process. The Contractor may negotiate with Department to return inmates with high-cost medical problems.

The Department may return to Wisconsin any inmate in order to meet their health care needs or to control the cost of care to such inmate.

The Contractor agrees to maintain coverage for medical malpractice negligence claims from Wisconsin inmates up to \$2,000,000.00 per claim.

4.0.10

Security of Inmate While Obtaining Offsite Medical Care

The Contractor agrees to cover the cost of and take all necessary precautions and exercise custodial supervision in order to assure the safekeeping of the inmate while the inmate is absent from the Contractor's Facilities.

4.1 FOOD SERVICE

The Contractor shall provide food services for all inmates in compliance with applicable ACA Standards. The Contractor shall provide modified diets for inmates with medical or dental conditions, as prescribed by physicians or dietitians. Food shall not be withheld for disciplinary reasons. Modified diets prescribed by recognized medical authority or religious authority will be provided as required.

4.2 SANITATION

The Contractor shall ensure that all inmates are living under healthy, sanitary conditions in accordance with all laws, regulations and ACA Standards.

4.3 RECORDS AND REPORTS

4.3.1

The Contractor shall prepare and maintain all necessary and pertinent records, including name, Department inmate number, birth date, the date and the place from which the inmate was transferred to the Contractor, the date of inmate return to the Department,

and the inmate's medical/ psychiatric/dental records, classification/housing status, and educational/vocational/treatment program activities during his stay in the Contractor's facility. When returning an inmate to the custody of the Department, the Contractor shall turn over all associated records of such inmate to the Department at the time the inmate is returned to the custody of the Department.

4.3.2

Within thirty (30) days following the transfer of an inmate to one of Contractor's facilities, the Contractor shall furnish to the Department an admission summary and classification study report outlining the inmate's custody level, housing assignment, medical/psychiatric, education, and vocational findings and indicating the institutional program which the Contractor recommends.

4.3.3

The Contractor shall provide the Department with quarterly reports on all inmates confined in the Contractor's Facilities. This report must contain, a summary by inmate of each inmate's disciplinary actions(s), grievance and drug testing activities.

The report shall be submitted by the Contractor to the Department's Contract Administrator or designee no later than the tenth (10) day after the quarter ends.

4.4 MUTUAL AID AGREEMENTS

The Contractor shall develop and implement mutual aid agreements with local law enforcement agencies, the Fire Department, Ambulance/Rescue Services, State Police, National Guard and other entities as deemed appropriate to assist in emergency response efforts.

4.5 VISITATION

The Contractor shall provide a visitation program for inmates (visiting program) consistent with ACA Standards. Additionally, within sixty (60) calendar days after this contract is executed, Contractor shall make accommodations to the Facilities to provide video visitation to accommodate families and friends unable to visit on site because of financial travel limitations or other reasons. The logistics shall be coordinated with the Department's Contract Administrator.

4.6 OFFICIAL HEARINGS

4.6.1

The Contractor shall provide adequate facilities, including but not limited to video conferencing capabilities, for proceedings of any nature including but not limited to administrative, probation, parole, attorney-client or judicial proceedings.

4.6.2

The Contractor shall conduct reclassification and housing hearings on each inmate on an as needed basis, but not less than once every six (6) months. Copies of the written reports of the results of all hearings shall be provided to the Department within thirty (30) days after each hearing is completed. This report must contain by inmate, a summary of each inmate's housing, custody status, disciplinary actions(s), mental/physical health, and vocational/academic/treatment program activities.

4.7 TRAINING OR EMPLOYMENT

4.7.1

The Contractor shall have sufficient programming to allow every general population inmate to participate in programs of occupational training and industrial or other work in accordance with applicable ACA Standards. Nothing contained herein shall be construed to permit or require any inmate to participate in any training, industrial, or other work

program contrary to the laws of the jurisdiction in which the facility is located or the laws of the State of Wisconsin.

4.7.2

The Contractor shall have the right to dispose of all products produced by an inmate, shall retain all proceeds therefrom, and shall bear all costs of work programs.

4.7.3

In the case of handicraft or hobby craft programs, the inmate shall have the right to dispose of the products of his labor through sale on site, mailed or transferred to visitors, and if sold, to retain the proceeds of any sale of his work in accordance with the rules of the Contractor.

4.7.4

The Contractor is responsible for paying inmate wages from the inmate Manday rate in accordance with its policies and procedures.

4.8 DISCIPLINE

The Contractor shall be responsible for setting the standards of behavior and imposing discipline of inmates in accordance with federal, state, and local laws and the ACA Standards.

The Contractor shall, within fifteen (15) days after this Contract is executed, provide the Department with a copy of its standards of inmate behavior, inmate rules and regulations and standard operating procedures for administrative disciplinary hearings.

4.9 LAW LIBRARY

The Contractor shall provide the inmates in each of Contractor's facilities the same or equivalent access to court resources as the Department's inmates, including CD ROM legal research resources.

4.10 PROGRAMS

The Contractor agrees to provide sufficient programs to allow every general population inmate to participate in meaningful educational, vocational, drug or other treatment or work programs. The educational programs shall include but not be limited to Adult Basic Education (ABE) and General Equivalency Diploma (GED) or similar high school equivalency or literacy programs.

4.11 RELIGIOUS SERVICES

The contractor shall provide physical space and program services for the practice of all recognized faith groups consistent with ACA standards.

4.12 LEISURE ACTIVITIES

The Contractor shall provide recreational, library and leisure skills activities in accordance with applicable ACA standards. Indoor activities must be out-of-cell.

4.13 RIGHT OF INSPECTION

The Department shall have the right to inspect, at any time, any correctional institution of the Contractor in which Department inmates are confined in order to determine if that institution maintains standards of care and discipline in accordance with the ACA Standards and that the inmates therein are treated equitably, regardless of race, religion, color or national origin.

4.14 CONFIDENTIALITY OF INFORMATION AND INSPECTION OF RECORDS

4.14.1

All information obtained by the Contractor relating to any inmate of the Department shall be kept in absolute confidence and shall not be used by the Contractor in connection with any other matters, nor shall any such information be disclosed to any other person, firm or corporation, without prior written consent of the Department.

4.14.2

The Contractor shall keep proper and complete books, records, and accounts with respect to the operation of each of the contractor's Facilities in which the Department's inmates are housed and shall permit the Department to inspect the same and make and take away copies thereof.

4.14.3

The Contractor shall establish appropriate safeguards to protect the confidentiality of inmate records and minimize the possibility of their theft, loss, or destruction. Any and all records delivered by the Department to the Contractor or any employee or subcontractor of the Contractor are deemed confidential and privileged information.

4.15 LAWS AND REGULATIONS

The Contractor shall at all times perform its duties under this contract in accordance with all applicable federal, state, and local laws and regulations, including protection of the confidentiality of all applicant recipient records, papers, documents, tapes or any other materials that have been or may hereafter be established which relate to this contract.

4.16 USE OF FORCE

4.16.1

The Contractor's employees shall be authorized to carry and use weapons only in accordance with ACA Standards, federal laws and the laws and regulations in effect in the state in which the Contractor's Facilities are located.

4.16.2

The Contractor's employees shall be authorized to use non deadly force as the circumstances require and then only in accordance with federal laws and the laws and regulations in effect in the state in which the Contractor's facility is located.

4.16.3

The Contractor's employees shall use deadly force only in accordance with federal law and the laws and regulations in effect in the state in which the Contractor's Facilities are located.

4.17 ESCAPE

In the event of an escape the Contractor shall take all reasonable measures to recapture and prosecute inmates consistent with the laws of the state in which the Contractor's facility is located. The Contractor shall notify the Contract Administrator as soon as possible, but no more than two (2) hours upon the discovery of the escape of a Department inmate from the Contractor's custody. Documentation shall be forwarded to the Department demonstrating the reasonableness and the extent of all efforts to recapture the inmate(s). All recapturing costs shall be the responsibility of the Contractor.

4.18 PHOTOGRAPHING AND RELEASE OF INMATE INFORMATION

The Contractor shall not release to the public any information, records or other data concerning inmates. The Contractor shall not release to the public personal histories or photographs of inmates or information concerning inmate's delivery, removal, intra-institutional transfer, retaking or release. The Contractor shall not permit reporters or photographers to interview or photograph inmates without the express written prior permission of the Department.

4.19 DISCLOSURE OF INFORMATION

No information regarding the Contractor's performance of the contract shall be disclosed by the Contractor to anyone other than the Department's officials unless written approval is obtained in advance from the Department.

4.20 DRUG FREE FACILITY

The Contractor shall make a good faith effort to maintain a drug-free facility.

4.21 CONTINUITY OF SERVICES

It is essential that the Contractor maintain continuity of service under this contract. Therefore, the Contractor shall cooperate with both the Contract Administrator and any successor Contractor to enable the smooth transition from one Contractor to another. This cooperation shall include the transfer of all records regarding each inmate. The Contractor shall assure that his/her direct staff is available for transition meetings and conferences with the Department's staff and the staff of the new Contractor.

4.22 DRUG AND ALCOHOL TESTING

The Contractor shall provide for drug and alcohol testing of all Inmates on a random basis, routine follow-up testing for those testing positive, routine testing for those for whom there are reasonable suspicions of drug use.

4.23 SAFETY AND EMERGENCY PROCEDURES

The Contractor shall provide copies of their safety, emergency and evacuation procedures in accordance with this Contract, including, but not limited to, contingency plans to assure operation of the Facilities in the event of an Employee labor dispute, riot, fire, civil disaster or power failure.

4.24 LAUNDRY

Contractor will provide laundry services.

4.25 COMMISSARY

Contractor will provide a commissary in accordance with ACA standards.

4.26 MAIL

Contractor will provide delivery of mail to inmates and send out mail from inmates in compliance with ACA standards.

4.27 SUPPLIES

Contractor will provide offenders with the following:

Clothing—outerwear, underwear, socks and shoes.

Hygiene—body soap, toothpaste, toothbrush.

Linen—sheets, pillow, blanket, towel, washcloth.

Contractor will provide for periodic exchange of durable items and replacement for non-durable.

4.28 GRIEVANCE PROCEDURE

Contractor will establish a formal grievance procedure for offenders in accordance with ACA standards.

ARTICLE 5 COMPENSATION AND ADJUSTMENTS

5.0 PAYMENT/INVOICES

5.0.1

The Department shall pay the Contractor monthly for services rendered at the fixed daily Manday rate of \$42.00 per inmate. The Contractor shall submit itemized invoices setting forth the name of each Department inmate in one of the Contractor's Facilities and the number of days such inmate was in the care and custody of the Contractor during the month.

5.0.2

Payment shall be based on the actual number of inmates per day at the Manday rate. The daily count of inmates at each of Contractor's facilities shall be the number of inmates as reported in the daily midnight Census Report. The Department will pay the Manday rate for the day of arrival, but not for the day of departure.

5.0.3

The Contractor shall submit monthly invoices to the Contract Administrator no later than the tenth day of the month following the provision of services under this contract. The Contract Administrator shall be required to certify receipt of satisfactory services prior to authorizing payments to Contractor. The billing procedures set forth in paragraph number 11 in the Standard Terms and Conditions are incorporated herein by reference. Explicit reference to that paragraph here does not imply the balance of the Standard Terms and Conditions are not incorporated herein; the Contractor and the Department expressly agree that all of the Standard Terms and Conditions are intended to be incorporated herein.

5.0.4

The Contractor shall include the following information in invoices:

- The contract number;
- The daily count for each Facility housing Department inmates;
- The service dates;
- The total amount due; and
- The Contractor's authorized signature.

5.0.5

The Contractor shall submit a final invoice no later than sixty (60) days after expiration of the contract.

5.0.6

At any time before final payment and three (3) years thereafter, the Contract Administrator may have the Contractor's invoices or vouchers and statements audited. The Department may reduce any payment by an amount determined by the Contract Administrator to constitute unallowable charges.

5.1 ASSIGNMENT OF CONTRACT PAYMENTS

The Contractor shall not assign any interest in the contract agreement after the award, and shall not transfer any interest in the same, whether by assignment or notation without the prior written approval of the Contract Administrator.

5.2 FUNDS AVAILABLE AND AUTHORIZED

Contractor shall not be compensated for work performed under this Contract by any other agency or department of the State of Wisconsin. The Department has sufficient funds currently available and authorized for expenditure to finance the costs of transferring 500 inmates to the Contractor's Facilities. An additional 700 beds will be used by the Department per the schedule set forth in Section 3.0 upon the Wisconsin Legislature's Joint Finance Committee's approval. The parties understand that the Wisconsin Legislature's Joint Finance Committee must approve this Contract before it goes into effect.

ARTICLE 6 INDEMNIFICATION, INSURANCE AND DEFENSE OF CLAIMS

6.0 INDEMNIFICATION, INSURANCE AND DEFENSE OF CLAIMS

6.0.1

The Contractor shall defend, indemnify, and hold harmless the State of Wisconsin and the Department, and their officers, employees and agents against any and all claims, suits, causes of action, damages, liability, and judicial, administrative or regulatory orders, awards and notices of violation, court, including all costs, expenses, and attorneys' fees incurred, as a result of any act or omission by Contractor, or its employees, agents, subcontractors, or assignees, relating to or arising out of this Contract.

6.0.2

The Contractor shall not waive, release, or otherwise forfeit or impair any possible claims, the State may have against any person or entity or any defense the State may have regarding claims related to or arising from or made in connection with the use, possession or operation of the Facilities by Contractor without the consent of the State. The Contractor shall, at its own expense, preserve all such available defenses and cooperate with the State to make such defenses available to the maximum extent allowed by law.

6.0.3

In case any action, suit, notice of violation or proceeding is brought against the State by reason of any such claim, Contractor, upon notice from the State, shall, at its own expense, defend against such action by counsel satisfactory to the State, unless such action, suit, notice of violation or proceeding is defended against by counsel for any carrier of liability insurance provided for herein.

6.1 INSURANCE

6.1.1

Without limiting Contractor's indemnification, Contractor shall continuously maintain and pay for such insurance as will protect Contractor and will protect the Department as a named insured and the State's employees from:

a) all claims, including but not limited to claims for injury or death and claims based on violation of civil rights, arising from the services performed under the Contract; and

b) actions by a third party against Contractor as a result of the Contract.

6.2 TYPES OF INSURANCE

6.2.1

Contractor must provide evidence (Certificate) of coverage at the Service Commencement Date of the contract, and within 30 days, the Contractor shall provide insurance policies and endorsements, in a form and with terms satisfactory to the Department, evidencing occurrence based insurance coverage of the following types, for the following purposes and in the following amounts:

a) Standard Worker's Compensation and Employers' Liability Insurance protecting the Contractor from claims for damages for physical or personal injury which may arise from operations performed pursuant to this Contract, whether such operations are performed by the Contractor, by a subcontractor, or by a person directly or indirectly employed by either of them, in the amount required by the Department.

b) Comprehensive General Liability Insurance, in an amount not less than two million dollars (\$2,000,000) for each occurrence with an aggregate of at least five million dollars (\$5,000,000). Coverage must include civil rights violations, which will include all claims brought by any persons, including but not limited to inmates, based in whole or in part on an alleged violation of this Contract, the United States or Wisconsin, statutes, policies, procedures, standards or regulation, including but not limited to, suits brought pursuant to 42 U.S.C. § 1983. Coverage shall include medical and professional liability for employed or contracted nurses, doctors, attorneys, counselors, psychologists and/or social workers.

c) Automobile and other vehicle liability insurance in an amount not less than \$2,000,000 per occurrence; to be provided under a business auto form.

6.2.2

All policies of insurance shall also include unlimited defense coverage in addition to the minimum levels of coverage required above.

6.3 INSURANCE SERVICES

6.3.1

All insurance policies required under this Contract must name the Wisconsin Department of Corrections, its officers, employees and agents as additional insureds and provide no less than sixty (60) days advance notice to the Department of any contemplated cancellation. The Department shall have the right, but not the obligation, to advance money to prevent the insurance herein from lapsing for nonpayment of premiums. If the Department advances such amount, then the Contractor shall be obligated to repay the Department the amount of any advances plus interest thereon at the legal maximum rate, and the Department shall be entitled to set off and deduct such amount from any amounts owed the Contractor pursuant to this Contract. No election by the Department to advance money to pay insurance premiums shall be deemed to cure default by the Contractor of its obligation under this Contract to provide insurance.

6.3.2

At least thirty (30) days prior to each policy anniversary date, the Contractor must provide the Department with renewal information, including estimated renewal premiums and suggested coverage changes.

6.3.3

Contractor shall provide constant monitoring of all companies providing coverage to ensure that the carriers are financially sound.

6.4 NOTICE OF CLAIMS

Within ten (10) business days after the Department receives a summons or other notice of claim, the Department shall notify Contractor in writing of the commencement thereof. Neither the State, its officers, employees or agents shall have any liability whatever for any failure to comply with the time requirements set forth in this Section.

6.5 SURVIVAL

Provisions of this Section survive the expiration or termination of this Contract.

ARTICLE 7 EMPLOYEES

7.0 INDEPENDENT CONTRACTOR

7.0.1

Contractor is associated with the State only for the purposes and to the extent set forth in this Contract. Contractor is and shall be an independent contractor and, subject to the terms of this Contract, shall have the sole right to manage, control, operate and direct the performance of its duties under this Contract. Contractor, its agents and Employees shall not be considered agents or employees of the State, nor shall agents or employees of the State be considered agents or employees of the Contractor. Contractor's agents and employees shall not accrue leave, retirement, insurance, bonding use of the Department's vehicles or any other benefit afforded to the employees of the Department as a result of this Contract.

7.0.2

Contractor shall provide sufficient qualified and trained personnel to meet its obligations under this Contract.

7.0.3

Contractor's personnel will receive training in accordance with ACA Standards.

ARTICLE 8 CONTRACT COMPLIANCE

8.0 BREACH

8.0.1

A party shall be deemed to have breached this Contract if any of the following occurs: (a) failure to perform in accordance with any term or provision of this Contract; (b) partial performance of any term or provision of this Contract; or (c) any act prohibited or restricted by this Contract.

8.0.2

The Contractor shall be deemed to have materially breached the Contract and the Department may terminate the Contract for cause if any of the following occurs: (a) failure to completely and timely perform any term or provision of the Contract; or (b) performance or occurrence of any act or condition prohibited or restricted by the Contract. For purposes of this Article, items (a) and (b) shall hereinafter be referred to as "Contractor Breach."

8.0.3

In the event of a Contractor Breach, the Department shall have available the following remedies, any one or more of which may be exercised by the Department: (a) actual

damages and any other remedy available at law or equity; and/or (b) partial withholding of the Department's performance under the Contract; and/or termination of the Contract.

8.0.4

In the event of Contractor Breach, the Department's Contract Administrator shall provide the Contractor with written notice of the Contractor Breach and a time period to cure said Contractor Breach. In the event the Contractor disagrees with the Department's determination of the Contractor Breach, period to cure, imposition of partial withholding or termination of the Contract, the Contractor shall appeal by notifying the Department's Contract Administrator in writing, who shall forward the appeal to the Department's Secretary for decision; provided, however, any appeal to the Department's Secretary shall not toll or otherwise affect the period to cure. In the event the Contractor fails to cure the Contractor Breach within the time period provided, then the Department shall have available any and all remedies described herein.

8.0.5

The language in 8.0.4 above regarding notice and opportunity to cure shall not be applicable in the event of successive or repeated Contractor Breaches of the same nature, in the event of abandonment of the Facilities by the Contractor, or in the event of a Court Order directing remedial action by the Department, in which case the Secretary may order immediate compliance, partial termination of the Contract for cause or termination of the Contract for cause.

8.0.6

The following shall constitute the breaches of the Contract on the part of the Department for which the Contractor may terminate the Contract: (a) To the extent it causes the Contractor to be unable to perform its obligations under this Contract, the persistent or repeated failure or refusal by the Department to substantially fulfill any of its obligations under this Contract, unless justified by Force Majeur, waived by the Contractor or excused by Contractor's default.

8.0.7

In the event of a breach by the Department, the Contractor shall notify the Department in writing within 30 (thirty) days after Contractor becomes aware of the breach. Said notice shall contain a description of the alleged breach. The Department shall be afforded a 45 (forty-five) day period in which to effect a cure or in which to take reasonable steps to effect a cure. If any cure is commenced within the time permitted which will take more than the time allotted above to effect a cure, then the Department shall be allowed the additional time as mutually agreed to by the parties.

8.0.8

Failure of the Contractor to provide the written notice described in 8.0.7 shall operate as an absolute waiver by the Contractor of the Department's breach.

8.0.9

In no event shall any breach on the part of the Department excuse the Contractor from full performance under this Contract.

ARTICLE 9
MISCELLANEOUS

9.0 INVALIDITY AND SEVERABILITY

In the event that any provisions of this Contract shall be held to be invalid, such provision shall be null and void, and the validity of the remaining provisions of the Contract shall not in any way be affected thereby.

9.1 VENUE

This Contract shall be interpreted according to the law in the State of Wisconsin.

9.2 RELEASE

Contractor, upon final payment of the amount due under this Contract, releases the Department, its officers and employees, from all liabilities, claims and obligations whatsoever arising from or under this Contract. Contractor agrees not to purport to bind the Department to any obligation not assumed herein by the Department unless the Contractor has prior express written authority to do so, and then only within the strict limits of that authority.

9.3 AMENDMENT

This Contract shall not be altered, changed or amended except by mutual consent of all appropriate signatories, their designees or successors in writing.

9.4 ENTIRE AGREEMENT

This Contract incorporates the RFP #C-461, including but not limited to the Standard Terms and Conditions which are part thereof, the November 21, 1997, clarification to RFP #C-461 issued by the Department, the Contractor's November 26, 1997, response to RFP #C-461, and any and all written exchanges and agreements between the Contractor and the Department.

Any disputes between the parties as to the meaning of the agreement between the parties shall be resolved by referring to this Contract, then to the documents mentioned immediately above in the order in which they are listed.

9.5 FORCE MAJEURE

Neither party shall be deemed to be in violation of this Contract if is prevented from performing any of its obligations hereunder for any reason beyond its control, including acts of God, civil or military authority, act of public enemy or any other serious cause beyond the reasonable control of either party.

9.6 NO THIRD PARTY BENEFICIARIES

Nothing contained in this Contract or inferable from this Contract is intended to confer any rights or remedies upon any person whatsoever other than the parties named herein. Furthermore, no portion of this contract is intended to relieve or discharge the obligation of any third persons to any party to this Contract, and no provision herein contained shall be construed to give any third party any claim, action or right of subrogation against any party hereto.

9.7 SUCCESSORS IN INTEREST

The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.8 INTERNAL RELATONSHIPS

Nothing in this agreement shall be construed to affect the internal relationships of the subdivision, offices, departments or agencies of the parties.

9.9 NOTICES

All notices shall be sent certified mail, return receipt requested, to:

Department: Dick Verhagen, Administrator
Division of Adult Institutions
Wisconsin Department of Corrections
149 E. Wilson Street
Madison, Wisconsin 53702

Contractor: Linda G. Cooper, Vice President, Legal Affairs
Corrections Corporation of America
10 Burton Hills Boulevard
Nashville, Tennessee 37215

9.10 POWERS OF THE PARTIES

The parties understand and agree that no clause, term, or condition of this Contract shall be construed to supersede the lawful powers or duties of either party.

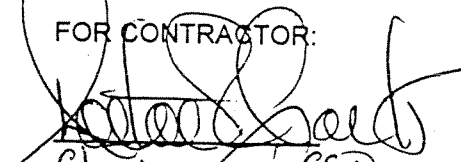
9.11 JUDICIAL ACTIONS

Any judicial action relating to the construction, interpretation or enforcement of the Contract shall be brought and venued in Dane County Circuit Court in Madison, Wisconsin. The Contractor hereby consents to personal jurisdiction in that venue and waives any defenses the Contractor otherwise might have relating thereto. The Contractor also hereby waives its right to a jury trial in connection with any judicial action or proceeding that may arise between the State and the Contractor concerning the construction, interpretation or enforcement of the contract.

The Contractor agrees to provide the Department with copies of civil and criminal pleadings filed by inmates in the Facilities by first class mail within ten (10) days after service on the Contractor. The Contractor shall not have to provide such copies to the Department if the pleadings appear to be frivolous in nature.

IN WITNESS WHEREOF, the parties hereunto affix their signatures below.

FOR CONTRACTOR:


Chairman & CEO

Date: 2 Feb 98

FOR THE DEPARTMENT:


Michael J. Sullivan, Secretary

Date: _____



Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

February 26, 1998

BY MESSENGER

Senator Brian Burke

Co-chair: Joint Committee on Finance

119 Martin Luther King, Jr. Blvd. – Suite 202

Madison, WI 53707-7882

Dear Sen. Burke:

I'd like to take this chance to reiterate a point of support for the Department of Correction's proposed contract with Corrections Corporation of America that will come before the Joint Finance Committee on March 5th: approving the contract is key to helping to ease the severe overcrowding problem at the Milwaukee County Jail.

The Milwaukee County jail has become so overcrowded, County Sheriff Lev Baldwin has started to place prisoners in unlikely places – such as the State Fair youth dormitory and the gymnasium in the Safety Building. There are approximately 1,630 people in the jail, which was designed to hold 798 prisoners.

The contract allows the DOC to move 1,200 inmates to Tennessee by August of this year, including 200 this month and 200 in March. This means that the DOC would be in a much better position to help house excess county jail inmates. However, the space won't be freed until the DOC can move forward on its contract – the 200 February inmates are already delayed, and any further snags will push things back even further.

Expediting the DOC/CCA contract creates a double-edged benefit: it helps ease the overcrowding situations in both the state's prison system and the Milwaukee County Jail, which creates a safer environment for guards, sheriff's staff and inmates. I strongly urge you to support the contract.

Sincerely,

Scott Walker
State Representative
14th Assembly District

SKW:mg





Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

February 25, 1998

BY MESSENGER

Senator Brian Burke

Co-chair – Joint Committee on Finance

119 Martin Luther King, Jr. Dr. – Suite 202

Madison, WI 53708

Dear Sen. ^{Brian}Burke:

I'm writing to you to express my strong support for the Department of Correction's \$13.10 request that your committee will be taking up on March 5th. The DOC's contract to send 1,200 prisoners to Tennessee is already behind schedule, but Joint Finance's swift approval of the deal could prevent any further delays.

As chair of the Assembly Committee on Corrections Facilities, I'm constantly dealing with ways to combat overcrowding in Wisconsin's prison system. While sending prisoners out of state isn't the best solution ever crafted, it's certainly better than continuing to house criminals in woefully overcrowded facilities.

Again, I strongly urge you to approve the contract between the Department of Corrections and the Corrections Corporation of America. Thank you for your attention to this matter, and please don't hesitate to contact me if you have any questions.

Sincerely,

Scott Walker
State Representative
14th Assembly District

SKW:mg



Agenda Item I

DOC - Private Prison Contract

Background:

Per provisions in 1997 Act 27, the Department of Corrections wants JFC approval to transfer up to 1,200 inmates to a private prison in Tennessee.

FB Analysis:

Jere Bauer says it makes sense to approve the contract and let the transfer occur.

However, there are some technical changes that can be made to improve the contract and future dealings with this issue (see the *Conclusion* on pp. 7 & 8).

Alternatives:

Recommend Alt 1 & 2(a), (b)

(note: not sure if alt 2 encompasses alt 1, may want to ask FB. If so, no separate vote on alt 1 would be needed).

(note 2: of course JFC should direct DOC to fix typos and punctuation errors in the contract. Very sloppy. Thanks to FB for pointing this out. Also, the passive review process seems to make sense for future activity related to this contract.)

(note 3: I don't think you should allow the transfer of the unencumbered balance to the JFC appropriation, because it slows things down if DOC needs this money to deal with the Milwaukee County situation (see highlighted section on p. 9). But you might want to ask FB what they think).



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

March 5, 1998

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Corrections: Section 13.10 Request for Private Prison Contract With Corrections Corporation of America--Agenda Item I

INTRODUCTION

The Joint Committee on Finance is required, under s. 302.26 of the statutes, to approve any contract to transfer 10 or more inmates in any fiscal year to any private prison facility in another state. The Department of Corrections has submitted a contract with the Corrections Corporation of America (CCA) for the housing of up to 1,200 inmates at two facilities in Hardeman County, Tennessee, for the Committee's approval.

BACKGROUND

In 1997 Act 27, the Department of Corrections was given the authority to contract with a private corporation for prison beds in other states. Specifically, Corrections is allowed to enter into one or more contracts. Contracts are required to contain all of the following provisions:

- (a) a termination date;
- (b) the costs of prisoner maintenance, extraordinary medical and dental expenses and any participation in rehabilitative or correctional services, facilities, programs or treatment;
- (c) specifications regarding any participation in programs of prisoner employment, the disposition or crediting of any payments received by prisoners, and the crediting of proceeds from any products resulting from employment;

- (d) specifications regarding the delivery and retaking of prisoners;
- (e) regular reporting procedures concerning prisoners by the private corporation;
- (f) procedures for probation, parole and discharge;
- (g) the use of the same standards of reasonable and humane care as the prisoners would receive in a Wisconsin institution; and
- (h) any other matters determined to be necessary and appropriate regarding the obligations, responsibilities and rights of Wisconsin and the private company.

Act 27 further specified that while in a private contract facility in another state, Wisconsin prisoners would be subject to all provisions of law and regulation concerning the confinement of persons in that institution under the laws of the state where the private institution is located. Further, any parole hearings for a prisoner confined under a contract are to be conducted by the Wisconsin Parole Commission. Contracts with private companies for prison beds are required to follow current state procurement requirements or current Corrections standards for the purchase of services for offenders. In addition, any contract to transfer 10 or more prisoners to any private provider of prison beds must be approved by the Legislature by law or by the Joint Committee on Finance.

In 1997 Act 27, funding for prison contracts with private and public providers was placed in a single GPR appropriation. In total, \$31.5 million GPR in 1997-98 and \$33.1 million GPR in 1998-99 was provided for prison bed contracts. Of the total, \$15.2 million GPR annually was provided for 1,030 contract beds (700 jail beds in Texas and 330 federal beds). Additional funding of \$16.3 million GPR in 1997-98 and \$17.9 million GPR in 1998-99 was provided to purchase beds from private contract providers, the Prairie du Chien (PDC) juvenile correctional facility and Wisconsin counties. It should be noted that 1997 Act 27 assumes that costs of the PDC facility (\$6,567,000 in 1997-98 and \$7,117,500 in 1998-99) will be fully funded from the contracts appropriation. If the federal beds, Texas county beds and the PDC beds are fully utilized, \$9.7 million GPR in 1997-98 and \$10.8 million GPR in 1998-99 would be available to support private contract space and contracts with Wisconsin counties.

CONTRACT SUMMARY AND ANALYSIS

The contract (attached) between Corrections and Corrections Corporation of America is divided into nine sections (articles) with an introductory clause. The following is a section-by-section summary and analysis.

Introduction. The purpose of the contract is stated: to house Wisconsin inmates in a private facility. The contract between Corrections and CCA was entered into on February 2,

1998. While CCA has signed the contract, the Department has not signed and is waiting for approval from the Joint Committee on Finance.

Article 1 -- Definitions. This article defines the terms of the contract. The terms include: (a) American Correctional Association (ACA); (b) ACA standards; (c) contract administrator; (d) facilities; (e) inmate; (f) manday; (g) service commencement date; (h) state; and (i) unforeseen circumstances. The facilities identified are Hardeman County 1 and Hardeman County 2, owned and operated by CCA in Whiteville, Tennessee. Whiteville is located approximately 45 miles east of Memphis.

Article 2 -- Terms of the Contract. The contract is effective for one year from the date both parties sign and may be renewed for two, one-year terms by mutual consent of Corrections and CCA. The contract may be canceled by either party, with or without cause, without penalty with sixty days notice. Corrections may cancel the contract, in whole or in part, without penalty if funding is not appropriated or if CCA fails to comply with the contract.

In article 9.3 of the contract, it is reiterated that the contract may not be altered except by mutual consent of all appropriate signatories. Even if Corrections and CCA mutually agree, however, statutes require that the Committee approve any modification of the terms of the contract at a s. 13.10 meeting. This approval includes not only substantive changes, but also the correction of typographical errors or other minor modifications. The Committee should note, though, that because the contract currently before the Committee allows for two, one-year extensions, extending the contract under the same terms would not require future Committee action.

Corrections has expressed a concern that the amount of time required for the Committee to schedule and review modifications to the CCA contract could be disadvantageous to the State. As with the Texas County jail bed contracts, the Committee could adopt a provision that would allow Corrections to request future changes to the CCA contract for prison space at the Hardeman County 1 and 2 facilities, under a 14-day passive review process. Under this process, Corrections could request that modifications to the contract be approved and if no objection is raised, the modifications could be approved. If, however, an objection is raised, a meeting could be held to address any issue.

Article 3 -- Inmates. Under the contract, CCA will house up to 1,200 male, medium- and maximum-custody inmates from Wisconsin in its two Hardeman County facilities. The contract indicates that subject to the approval of the Committee, 200 inmates would be sent to Tennessee in February, 1998, 200 more in March, 1998, 400 in July, 1998, and 400 in August, 1998. Transportation of inmates to the CCA facilities would be provided by CCA. CCA will also cover the costs of returning 10 or more inmates to Wisconsin. Corrections would be responsible for returning fewer than 10 inmates. While the contract allows for inmates to be transferred "from one facility to the other", Corrections indicates that inmates will only be transferred between the Hardeman County facilities and not to other CCA facilities.

The contract specifies that CCA will provide confinement, care, treatment and rehabilitation. These services are further detailed in article 4 of the contract.

Under the contract, CCA would use Wisconsin's inmate classification system for determining security and program needs of inmates. Corrections is required to send an application form for each inmate it plans to send to CCA 10 days prior to any transfer. The application is required to contain: (a) name; (b) inmate number; (c) birth date; (d) case history; (e) physical and clinical condition; (f) judicial and administrative rulings; (g) photographs; and (h) fingerprints. CCA has five days to review the application, and if the CCA objects to the transfer, Corrections and CCA will attempt to resolve the issue(s) within 10 days of receipt of the application. If a dispute cannot be resolved within the 10-day timeframe, Corrections' decision will govern the transfer.

In addition to issues of the number of inmates, transportation of inmates and the application process, article 3 also addresses inmate commissary accounts, removal of an inmate from the CCA facilities, retaking of inmates, death of an inmate and inmate property.

Article 4 -- Scope of Service. Article 4 addresses medical and other inmate services and institutional operating issues. The contract requires CCA to provide onsite health care at least 16 hours per day Monday through Friday and at least eight hours per day on Saturday, Sunday and legal holidays. In addition, CCA is required to provide 24 hour per day, seven day per week emergency medical services, and on-call nursing coverage when health care staff are not at the institutions. Under the contract, CCA will pay for all onsite and offsite outpatient health care. For offsite inpatient care, CCA will pay all costs up to \$60,000 per inpatient visit. After \$60,000 in costs, Corrections would reimburse CCA for 60% of all costs over \$60,000.

The contract requires CCA to have a visitation program. In addition, CCA is required, within 60 days after the contract is executed, to provide for video visitation for family and friends of the inmates who are unable to visit. Corrections does not, at this time, know how video visitation will be administered in Wisconsin.

Under the contract, CCA is required to have sufficient programming to allow every general population inmate to participate in programs of occupational training and industrial or other work. The contract specifies that inmates are not required or permitted to participate in any training, industrial or other work program that is contrary to Tennessee law or the law of Wisconsin. CCA has the right to dispose of any inmate-produced products and retain the proceeds. This provision does not, however, apply to hobby or craft items produced by an inmate. CCA is required to pay inmates in accordance with its policies.

According to CCA's inmate handbook, inmate wages range from \$0.17 per hour to \$0.50 per hour for various institutional support positions or training programs. For comparison purposes, Wisconsin institutions pay inmates from \$0.08 per hour to \$0.47 per hour depending on the work or program assignment and experience. The Wisconsin wages are for institutional

jobs and are not for those inmates working in Badger State Industries or the private business/prison employment program.

The Hardeman County facility currently offers the following vocational programs: (a) interior renovation and repair; (b) building maintenance and repair; (c) commercial cleaning and maintenance; (d) horticulture and grounds maintenance; (e) residential electrical wiring; and (f) electrical mechanical multicraft. Besides these programs, the Hardeman facility also has institutional support jobs for inmates.

In addition to specifying vocational and employment training, the contract generally requires CCA to have sufficient programs to allow every inmate to participate in educational, vocational, drug or other treatment, or work programs for at least three hours per day. Educational programs include adult basic education, general equivalency diploma programs and literacy programs.

Besides sections on health services, visitation and inmate programs, article 4 also contains sections on: (a) food services; (b) sanitation; (c) records and reports; (d) mutual aid agreements; (e) official hearings; (f) discipline; (g) law library; (h) religious services; (i) leisure activities; (j) the right of Corrections to inspect the facilities at any time; (k) confidentiality of information and inspection of inmate records; (l) use of force; (m) escape; (n) release of inmate information; (o) disclosure of information about CCA's performance; and (p) other administrative and operational functions. Further, article 4 requires CCA to operate in accordance with all applicable federal, state and local laws. While the contract does not specify which state and local laws are used, Corrections has indicated that, unless specifically stated otherwise, Tennessee law applies.

Article 5 -- Compensation and Adjustments. The contract establishes a rate per inmate of \$42 per day for Wisconsin inmates placed at CCA's two Hardeman County facilities. This daily rate includes housing, transportation, medical services, and vocational and educational program costs. The contract specifies that CCA will be paid monthly based on the actual number of days inmates are held at the two CCA facilities. The contract further specifies that CCA may not assign any interest in the agreement to any other party without the approval of the contract administrator.

In the request letter to the Committee, Corrections indicates that funding to support the costs of the CCA contract are available in the Department's current budget, but that additional funds will need to be provided from the Committee's supplemental appropriation under s. 20.865(4)(a) for 1998-99. In 1997 Act 27, supplemental funding of \$4,900,000 GPR in 1997-98 and \$10,100,000 GPR in 1998-99 was placed in the Committee's biennial appropriation for prison bed contracts.

The correctional contracts and agreements appropriation, from which the CCA and other prison space contracts are supported, is funded at \$31,442,700 GPR in 1997-98 and \$33,093,500 GPR in 1998-99. Corrections currently estimates that the appropriation will lapse \$1,989,000 GPR in 1997-98 and have a deficit of \$18,753,000 GPR in 1998-99 based on projected contract

space utilization. A portion of the projected deficit in 1998-99 could be funded from the \$15.0 million GPR currently reserved in the Committee's appropriation. The remaining \$3,753,000 deficit would need to be funded either through supplements to the appropriation or from decreased utilization of contracted space. Corrections' projection for 1998-99 assumes that 1,500 inmates will be placed with CCA by October, 1998, that the cost per inmate will remain at \$42 per day, and that the use of other contracted space will increase slightly. The Committee should note, however, that: (a) any increase in the number of inmates placed with CCA over the 1,200 inmates proposed in the current contract and any other changes to the contract would require the approval of the Committee; and (b) to the extent that use of contracted space is less than estimated, costs will be less and any deficit would be lessened or eliminated.

Article 6 -- Indemnification, Insurance and Defense of Claims. Under the contract, CCA is required to protect the state against any claim as a result of any act or omission by CCA and cannot forfeit any defense the state may have against a claim without the state's permission. The contract also requires CCA to have general liability and worker's compensation insurance in amounts prescribed by Corrections. The provisions of Article 6 continue after the expiration of the contract in order to protect the state from suits that may occur after the contract ends.

Article 7 -- Employees. The contract specifies that CCA is an independent contractor and, as such, is not considered an agent of the state. Likewise, state employees are not considered agents of CCA. In a recent U.S. Supreme Court case (Richardson and Walker v. McKnight), it was held that prison guards in a private contract facility are not entitled to qualified immunity from a law suit because of the fact that they are guarding state prisoners. Provisions of the contract with CCA appear to conform with this ruling by specifically stating that agents of CCA are not state employees.

Article 8 -- Contract Compliance. Article 8 addresses breach of contract issues for both parties to the contract and each individually. The contract indicates that a breach has occurred if either party: (a) fails to perform in accordance with the contract; (b) partially performs any term or provision of the contract; or (c) performs any act prohibited or restricted by the contract.

CCA is deemed to be in breach of the contract if any of the following occurs: (a) failure to completely and timely perform any term or provision of the contract; or (b) performance or occurrence of any act or condition prohibited or restricted by the contract. In the event of a CCA breach, the Department may exercise any of the following remedies: (a) seek actual damages and any other remedy available at law or equity; and/or (b) partially withhold the Department's performance under the contract; and/or (c) terminate the contract.

Corrections is deemed in breach of contract if CCA is unable to perform its obligations under the contract because of the persistent or repeated failure or refusal by the Department to substantially fulfill any of its obligations, unless justified by force majeure (acts beyond either party's control), waived by CCA or excused by CCA default. In the event of a breach by the Department, CCA is required to notify the Department in writing within 30 days after it becomes aware of the breach. The Department is then allowed a 45-day period in which to effect a cure

or in which to take reasonable steps to effect a cure. If any cure is commenced within the time permitted that will take more than the time allotted, the Department is allowed the additional time as mutually agreed to by the parties. In no event, however, does a breach on the part of the Department excuse CCA from full performance under the contract.

Article 9 -- Miscellaneous. The final article of the contract addresses the following miscellaneous contract provisions: (a) invalidity and severability of the contract (the contract is severable); (b) venue (the contract will be interpreted under Wisconsin law); (c) release of the Department from further obligation once the contract is concluded; (d) the amendment of the contract by mutual consent; (e) the contract incorporates Corrections' November 21, 1997, request for proposals (RFP), clarifications to the RFP, CCA's November 26, 1997, response and all written exchanges between CCA and Corrections; (f) force majeure (acts of God); (g) prohibition on third party beneficiaries; (h) specification that any successor to the contract is bound by the contract; (i) specification that the contract does not affect the internal relations of either of the parties; (j) the names of the contact persons in Corrections and at CCA; (k) specification that the contract does not supersede the lawful powers or duties of either party; and (l) judicial actions (all judicial actions regarding the contract will be held in Dane County court; CCA waives its right to a jury trial in connection with any actions arising from contract disputes; and Corrections will receive copies of all civil and criminal pleadings by inmates that CCA determines are not frivolous).

CONCLUSION

The Department of Corrections has by policy defined the operating capacity of the prison system as the lesser of: (a) the number of inmates that a correctional institution can house; or (b) an institution's capacity to provide non-housing functions such as food service, medical care, recreation, visiting, inmate programs, segregation housing and facility administration. Medical services and segregation beds (single cells for inmates removed from the general population for behavioral or security reasons) are not counted in housing capacity. Housing capacity is defined as: (a) one inmate per cell at maximum security facilities, with a 2% cell vacancy rate; and (b) up to 20% double occupancy of cells in medium security facilities existing as of July 1, 1991, or 50% double occupancy of cells in medium security facilities constructed after July 1, 1991. No specific standard has been established for minimum security institutions, but capacities have been determined on an institution-by-institution basis. Corrections' operating capacity figures also include contracted county jail and prison beds.

As of February 20, 1998, Corrections' identified operating capacity was 11,317 inmates. This figure included 1,454 contract beds in Wisconsin and Texas county jails, and federal facilities. On that same date, Corrections' inmate population totaled 15,119. As a result, the adult correctional facilities were at 134% of operating capacity.

In reviewing the operating capacity figure, however, the Committee should note the following:

- The current capacity figures do not include 300 beds in barracks units that were recently constructed but have not yet become operational at two correctional institutions or the 400-bed Racine Youthful Offender Correctional Facility, which is scheduled to open this spring. Inclusion of these beds would increase Corrections' defined operating capacity to 12,017.

- The capacity figures do not include future additions to operating capacity that are the result of current construction projects expected to be completed during the 1997-99 biennium. If these beds are added, the operating capacity figure would increase by 855 beds to 12,872 beds.

- Operating capacity figures do not include the "supermax" facility (500 beds scheduled to open in 1999), or additional beds provided in the 1997-99 capital budget (1,200 additional beds, excluding 400 beds for a probation and parole hold facility).

- To the extent that Corrections exceeds the percentages of double-occupied cells or redefines any of the terms used in its operating capacity definition, additional inmates can be accommodated.

To partially address the crowding issue, the Legislature created statutory language in 1997 Act 27 that allowed Corrections to contract for private prison beds in another state. Act 27 also provided increased funding for these contracts. The contract currently before the Committee is the result of these previous actions.

The contract with CCA appears to comply with the statutory requirements for contracting for private prison space. Specific provisions of the contract establish a \$42 per day, per inmate rate that covers housing, transportation, programming and most medical care. The contract covers a period of one year, with two possible one-year extensions. While certain provisions in the contract could be worded more clearly and the contract contains a number of typographical and punctuation errors, the contract appears to be beneficial to the state. As a comparison, the Texas jail contract provides a per inmate rate of \$39.96 per day; however, under this contract transportation and certain prisoner medical expenses are paid by the state, and the programming provided by Texas jails is more limited. As a result, the Committee may wish to approve the contract. Once the Governor has signed the s. 13.10 minutes, Corrections could sign the contract.

In addition to approving the contract, however, the Committee may wish to adopt any or all of the following provisions:

- As written and submitted to the Committee, the contract has a number of typographical and punctuation errors, and uses incorrect words in some locations. While not material to the contract, these errors should be corrected. The Committee could, therefore, allow Corrections and CCA to correct these errors, and submit a corrected and signed copy to the Committee without a further meeting.

- In order to reduce the amount of time required for the Committee to schedule and review future modifications to the CCA contract, a provision could be adopted that would allow

Corrections to request changes to the CCA contract for prison space at the Hardeman County 1 and 2 facilities, under a 14-day passive review process. Under this process, Corrections could request that modifications to the contract be made and if no objection was raised, the modifications would be approved. If, however, an objection were raised, a meeting could be held to address the issues.

- Since estimates currently indicate that \$1.9 million GPR in 1997-98 will lapse from the annual correctional contracts and agreements appropriation, and that the appropriation is projected to have a deficit of an estimated \$3.8 million in 1998-99, the Committee could adopt an alternative to transfer the unencumbered balance in the 1997-98 appropriation to the Committee's biennial appropriation for future release. Under this alternative, any funding remaining in the appropriation at the end of 1997-98 could be utilized in 1998-99 for purchasing prison bed space. The Committee should note that because of funding needs in other areas of the Department and the state's potential response to crowding conditions in the Milwaukee County Jail, the Department has indicated that it may need to utilize some or all of the estimated lapse of the appropriation. If this situation were to occur, less funding would be available to transfer at the end of 1997-98.

ALTERNATIVES

1. Approve the contract between the Department of Corrections and Corrections Corporation of America for the provision of up to 1,200 prison beds at its facilities in Hardeman County, Tennessee.

2. In addition to Alternative 1, approve any or all of the following:

- a. Allow Corrections and Corrections Corporation of America to correct typographical and punctuation errors and the use of incorrect words without a further meeting of the Committee. If so corrected, require Corrections to submit a corrected and signed copy of the contract to the Committee.

- b. Allow Corrections to request changes to the Corrections Corporation of America contract for prison space at the Hardeman County 1 and 2 facilities, under a 14-day passive review process.

- c. Require that any unencumbered balance in the corrections contracts and agreements appropriation (s. 20.410 (1)(ab)) on June 30, 1998, transfer to the Joint Committee on Finance's supplemental appropriation (s. 20.865 (4)(a)) for possible release to the Department of Corrections for the purchase of contracted prison space.

3. Deny the request.

Prepared by: Jere Bauer
Attachment